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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 DENNIS FLORER,

10 Plaintiff,

11 v.

12 CHERYL JOHNSON-BALES, *et al.*,

13 Defendants.

No. C06-5561 RJB/KLS

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL DISCOVERY
REQUEST NO. 21 AND GRANTING
EXTENSION OF DISCOVERY
DEADLINE AS TO DEFENDANT
BENFIELD

14 Before the court is Plaintiff's Motion to Compel Discovery Request No. 21. Dkt. 224.
15 Defendants oppose the motion because the discovery request is directed to Diane Benfield, who
16 has not been served in this lawsuit and is not represented by counsel in this case. Dkt. 238.
17 Plaintiff filed a reply. Dkt. 254. Since the filing of his motion, Diane Benfield filed a waiver of
18 service of the summons and complaint. Dkt. 259.
19

20 **DISCUSSION**

21 Pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure, parties may obtain
22 discovery of relevant information. Relevant information is defined as information that is
23 "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).
24 The Court may deny relevant discovery, however, if the "burden or expense of the proposed
25 discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2)(iii). After careful review of the
26

1 discovery requests, the objections stated, and argument of the parties, the Court finds that the
2 motion to compel should be denied.

3 Plaintiff has twice attempted to serve a discovery request consisting of interrogatories and
4 requests for production on Diane Benfield. Dkt. 238, Exh. 1, ¶¶ 2-3.

5 Diane Benfield was not named as a defendant in this action until October 21, 2009, when
6 the court ordered substitution of Diane Benfield as the individual formerly identified in
7 Plaintiff's Third Amended Complaint as the "registered dietician identified in Grievance Log
8 No. 0823868." Dkt. 200. The court directed the U.S. Marshal Service to serve Ms. Benfield
9 with the Third Amended Complaint on November 23, 2009. Dkt. 208. On January 25, 2010,
10 Ms. Benfield filed a waiver of service of summons and complaint.
11

12 Pursuant to Federal Rule of Civil Procedure 33, the rules governing interrogatories,
13 interrogatories are to be served on parties. Pursuant to Federal Rule of Civil Procedure 34, the
14 rule governing requests for production, these requests are also to be served on parties.
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16 Plaintiff mailed his discovery request directed to Ms. Benfield to counsel for Defendants.
17 However, at the time he mailed his requests, Ms. Benfield was not yet a named defendant or
18 "party" and not represented by counsel in this case. Dkt. 238, Exh. 1, ¶¶ 2-3. As such, pursuant
19 to Federal Rules of Civil Procedure 33 and 34, Plaintiff could not at that time serve discovery on
20 Ms. Benfield, nor could the undersigned counsel accept such service. FRCP 33(a); FRCP 34(a).
21

22 The court previously advised Plaintiff that he could request an extension of time of the
23 discovery cutoff deadline based on the specific discovery he may need to seek from Ms. Benfield
24 after she is served in this action. Dkt. No. 200. In his reply, Plaintiff requests an extension of
25 discovery "as to Discovery Request No. 21," so that he may resubmit "Discovery Request No. 21
26 to D. Benfield....." Dkt. 254, p. 1. Therefore, the court finds it appropriate to extend the

1 discovery deadline until April 16, 2010 as to Diane Benfield only. Counsel for Defendants is
2 directed to advise Plaintiff as soon as possible if she will accept service of the discovery on
3 behalf of Defendant Benfield.


4 Plaintiff has not sought a continuance of his motion for summary judgment; that motion
5 (Dkt. 211) is presently noted for February 12, 2010. Defendants have responded and filed a
6 cross-motion for summary judgment. Dkt. 262. The court will not disturb the parties' noting
7 dates on these motions *sua sponte*. However, Plaintiff may file a motion to withdraw his motion
8 for summary judgment based on the need to obtain Defendant Benfield's discovery and request
9 an extension of the dispositive motions deadline.

11 Accordingly, it is **ORDERED**:

12 1) Plaintiff's motion to compel (Dkt. 224) is **DENIED**; however, Plaintiff's request
13 for an extension of the discovery deadline is **GRANTED** for the sole purpose of resubmitting the
14 interrogatories and requests for production identified by the parties as "Discovery Request No.
15 21" to Defendant Benfield. The discovery deadline shall be extended until **April 16, 2010**.

17 2) The Clerk is directed to send copies of this Order to Plaintiff and counsel for
18 Defendants.

20 DATED this 17th day of February, 2010.

23 
24 Karen L. Strombom
25 United States Magistrate Judge
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